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Chairman: Mr. Amor

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The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant

Fifth periodic report of Colombia
(CCPR/C/COL/2002/5)

1. *At the invitation of the Chairperson, the delegation of Colombia took places at the Committee table.*

2. **Mr. Giraldo** (Colombia), introducing his country's fifth periodic report, said that the administration of President Uribe was extremely open to working with international organizations and with United Nations entities in the field of human rights. An office of the United Nations High Commissioner for Human Rights was located in Bogotá, and several special rapporteurs of the Commission on Human Rights had recently visited the country. His Government also worked closely with the Inter-American Commission on Human Rights and gave non-governmental organizations (NGOs) full scope to carry out their activities. His Government was intent on creating a climate of openness and democracy, which guaranteed the civil, political, economic, social and cultural rights of all citizens. Even in the midst of conflict and violence, it was making every effort to ensure that the State was strong enough and had the necessary instruments to enforce the rule of law without abusing its powers.

3. In Colombia displacement had decreased by 50 per cent and massacres by 33 per cent. Murders had decreased by 20 per cent overall. Murders of journalists were down by 43 per cent; of teachers, by 48 per cent; and of indigenous persons, by 9 per cent. Incidents of abduction had declined by 26 per cent. A Presidential referendum had been rejected on the grounds of light voter turnout and the election of a governor and mayor from the opposition left-wing party had been among the outstanding political achievements of the past year.

4. **The Chairperson** invited the delegation to address questions 1 to 15 on the list of issues (CCPR/C/79/L/COL).

Constitutional and legal framework within which the Covenant is implemented (article 2 of the Covenant)

5. **Ms. Gil** (Colombia), referring to question 1 on the list of issues, said that Legislative Act No. 223 was a constitutional reform amending articles 15, 24, 28 and 250 of the Political Constitution, and had been adopted by the required majority in Congress. The Act limited, but did not suspend or abolish, the rights to freedom and inviolability of domicile and communications. It adhered strictly to articles 9, 12, 14 and 17 of the Covenant which permitted limitation of those rights provided that it was not done in an arbitrary fashion and was subject to legal controls. The Legislative Act could be applied only to combating terrorism and was regulated by statutory laws — which took precedence over ordinary law in Colombia — imposing time limits on special powers (in certain cases, the maximum was four years) as well as administrative controls by the Attorney-General's Office and judicial controls over temporary measures and those implementing them. Political controls were also in place; the Government was required to report to Congress every month on how the special powers were being used.

6. Registration of residence was also subject to legal controls set out in statutory laws. The Fuerza Pública (Public Force, composed of the military forces and law enforcement officers) must abide by the provisions of article 14 of the Covenant in carrying out the functions of the judicial police and could not do so without the authorization of the Office of the Public Prosecutor. In the interest of national security, they could exercise their special powers only in specific circumstances and places, and were held to the same standards of accountability applicable to all State officials. Special powers were conferred provisionally and only for the purpose of supporting work already being carried out by the regular investigative authorities.

7. **Mr. Franco** (Colombia), referring to question 2, said that Decree No. 128 of 2003 was designed to encourage desertion from illegal armed groups and to facilitate their members' reintegration into civil society. The Decree was implemented by Act No. 782 of 2002, which prohibited persons who had committed war crimes or crimes against humanity from receiving the benefits set out in Decree No. 128 or from receiving any benefits contrary to Colombia's international obligations. In 2003 alone, 2,600 individuals, including 300 minors, who had benefited

under the Decree had withdrawn from illegal armed groups.

8. The *Comité Operativo para Dejación de las Armas* (CODA) did not take decisions on applying the Decree but rather was an administrative body responsible for verifying membership in illegal armed groups and evaluating individual decisions to abandon armed conflict.

9. Referring to question 3, he said that the bill to reform the justice system had been withdrawn and the various political parties and groups represented in Congress, the High Courts and the Public Prosecutor's Office were attempting to reach a consensus on amendments to *amparo* proceedings in the light of their role and importance in Colombian society since the adoption of the 1991 Political Constitution.

10. In his democratic manifesto, President Uribe had stressed the need for a negotiated solution to the armed conflict and appealed to the international community for support. Paragraph 35 of his policy on democratic security guaranteed that members of illegal armed groups who laid down their arms and wished to participate in a democratic society would be free to express dissident political views. In that connection, the Secretary-General had been requested to assign a special representative to use his good offices in a dialogue between the Government and the armed groups. Additionally, during the previous administration, the Catholic Church had made contacts with paramilitary groups interested in a cessation of hostilities and negotiating with the Government. However, despite confirmation by the Colombian High Commissioner for Peace, in 2002, of those groups' intention to disband and a government report of February 2004 documenting a significant decrease in their activity, violations had occurred. The Government therefore had decided that paramilitary groups interested in pursuing dialogue should congregate in certain designated areas and welcomed the intervention of the Mission to Support the Peace Process in Colombia appointed by the Permanent Council of the Organization of American States (OAS).

11. The draft act on alternative penalties, which was not mentioned in the list of issues, was designed to introduce legal mechanisms for achieving a negotiated peace by lightening the sentences of members of armed groups. The draft legislation had been proposed by President Uribe in a June meeting with non-governmental organizations and had been the topic of broad national debate by committees in the Senate and House of Representatives, NGOs, other civil society organizations and national experts. During the fifty-eighth session of the General Assembly, President Uribe had also invited input from the international community and, in January, the Colombian High Commissioner for Peace had launched public hearings on the topic. Without offering amnesty or pardon to convicted members of paramilitary groups, the alternative penalty system would suspend the sentences of persons demonstrating a willingness to cooperate with the justice system and embrace democracy. The Colombian authorities were well aware of the tremendous challenge involved in attempting to harmonize the possibilities for peace with the need to carry out justice, uncover the facts and make reparations to victims' families; however, it hoped that the international community would understand the urgency of overcoming the current crisis. The previous year had witnessed a 133 per cent increase in the capture of paramilitary group members and the reintegration of 787 such individuals into society.

12. **Ms. Gil** (Colombia), referring to question 4, said that under the Political Constitution, only the Public Force could use coercion to guarantee citizens' rights. The Public Force was charged with controlling all illegal armed groups or individuals which threatened civil rights and freedoms and Directive No. 15 of 2003 strengthened its institutional commitment in that regard. Under Decree No. 324 of 2000, a centre had been created to coordinate the struggle against paramilitarism and other illegal armed groups with the participation of the Ministry of Defence, the Ministry of the Interior, the Ministry of Justice, the Attorney-General's Office, the Public Prosecutor's Office, the Commander-in-Chief of the Armed Forces and the Director-General of the Police. The centre's work was crucial to promoting human rights in Colombia; the institutional strengthening of the Public Force, guaranteed effective protection of Colombian citizens, their property and their rights and freedoms.

13. **Mr. Ramírez** (Colombia), also referring to question 4, said that the statistics he provided must be understood in the specific context of the Colombian judiciary, particularly the role of the Attorney-General, who carried out the investigative functions that would be assigned to examining magistrates and criminal police in other legal systems, in addition to ordering

pre-trial detentions and determining what charges would be brought against the accused.

14. There was no legislation which specifically criminalized ties between the security forces and paramilitary groups, although of course charges could be laid for conspiracy or specific criminal activities. Between 1 August 2001 and 31 January 2004, the Human Rights Unit of the Office of the Public Prosecutor had begun 64 investigations, 68 members of the armed forces had been detained and 75 charges had been laid against members of the security forces. The police and military were implementing programmes and measures aimed at eliminating collusion with paramilitary groups. In operations against paramilitary groups in 2000 and 2003 respectively, 187 and 346 members of the security forces had been killed. Furthermore, in 2002 and 2003 respectively, 1,356 and 3,166 paramilitaries had been taken prisoner. The higher figures for 2003 testified to his Government's commitment to putting an end to paramilitarism.

15. **Ms. Gil** (Colombia), referring to question 5, recalled that Act No. 288 of 1996 specifically authorized the Government to implement the recommendations adopted by the Committee under the Optional Protocol to the Covenant. The Government and the judicial authorities first reviewed the recommendation and relevant international jurisprudence. The Constitutional Court had recently ruled that acquittals in cases which involved presumed human rights violations could be appealed.

16. Review of a recommendation from an international body was undertaken by the committee of ministers created by Act No. 288 of 1996, which included representatives of the ministries of defence, interior and justice and foreign affairs. Following a review of the case history, including whether or not all domestic remedies had been exhausted, the Committee decided whether the recommendation was valid and should be implemented. In principle, domestic legislative and constitutional guarantees of fundamental human rights, provided adequate protection. In cases where the committee of ministers decided not to implement a recommendation, its decision could nevertheless be appealed.

Equality of rights between men and women; principle of non-discrimination; and protection of the family and children (articles 3, 23, 24, and 26 of the Covenant)

17. **Ms. Gil** (Colombia), referring to question 6 on action taken against domestic violence, said that her Government, aware of the existing cultural and institutional impediments to the implementation of the laws on the matter, had included in the National Development Plan a programme on women's issues that dealt with educational and cultural matters, reproductive health, violence against women, political participation, communications, rural women, and institutional strengthening. The Presidential Advisory Council on Equal Rights for Women was actively introducing a gender perspective into all national plans and ensuring that all government departments developed a policy on women. A specific programme against domestic violence comprised prevention via education and dissemination of information on women's rights, detection and monitoring of instances of family violence, including the mistreatment of children, and encouraging the reporting of such incidents, and the provision of general inter-disciplinary health care for women in all regions of the country. Gender violence was a real problem in Colombia, not simply within the family, but also against displaced women and in the context of trafficking in women. Her Government was making a huge effort to achieve genuine equality for women as to rights and opportunities, and was committed to including women in the peace process.

18. In answer to question 7, the national programme on women's issues recognized the sexual and reproductive rights of women as human rights and made safe pregnancy, family planning, adolescent health, and the care of cervical cancer and sexually transmitted diseases part of the national health services offered.

19. **Mr. Ramírez** (Colombia), referring to the issue of abortion, observed that the Constitution protected the right to life, including that of the unborn person. Consequently, article 122 of the Penal Code made abortion a crime for both the woman and any accomplice. Article 124, however, provided for lesser penalties for abortion of a pregnancy resulting from rape or non-consensual sex. The new Penal Code, moreover, gave judges the latitude to impose lighter penalties or waive them altogether in such cases. Furthermore, article 32 of the Penal Code provided for the extinction of criminal responsibility if abortion was

performed for medical reasons, to protect the mother's life or to defend a basic human right.

20. **Mr. Ramírez** (Colombia), referring to question 8 on gender-based violence, said he was not aware of any comprehensive statistics which would indicate that there had been a reduced number of sentences for crimes of that kind. Gender-based violence certainly existed and the fact that victims often hesitated to bring charges, whether out of shame or because they feared additional repercussions or victimization as a result, made it difficult to obtain a true picture of the situation. The Public Prosecutor's Office was therefore implementing plans to establish special units for victims of gender-based violence where the latter would have access to psychologists and medical personnel trained in gender-based violence issues in order to encourage the reporting of such crimes.

21. **Mr. Franco** (Colombia), turning to question 9, said that he had no recent information on budgetary allocations for his Government's many programmes to benefit women, children, minorities and internally displaced persons. In 2003, however, funding had been found to educate 500,000 of the 2 million children who were not yet attending school. Some $13 million had been allocated to meet the food needs of displaced persons; emergency aid had been provided to 4,300 families; and a joint relief programme with the World Food Programme had been allocated $22 million. Approximately $40 million had been allocated to a social and economic stabilization fund. to give some idea of the magnitude of the problem, he pointed out that the funds allocated to assist displaced persons in 2003 had helped only 8,500 of the more than 300,000 households of displaced persons in the country. In 2003 and 2004, respectively, $25 million and $42 million had been allocated for transfers to indigenous territorial units.

States of emergency (article 4 of the Covenant)

22. **Mr. Franco** (Colombia), turning to question 10, recalled that emergency legislation had not been implemented for more than a year. While there had been calls to limit the Constitutional Court's powers in that regard, his Government had no intention of doing so. It was however its position that although the Court had the power to rule on the constitutionality of measures used to implement emergency legislation, the decision to declare an emergency must remain a political one taken by the executive branch and confirmed by Congress.

Right to life, liberty and security of person; prohibition of torture (articles 6, 7 and 9 of the Covenant)

23. Turning to the issue of "peasant soldiers" raised in question 11 on the list of issues, he said that the establishment of such units was governed by Act No. 48 of 1993 on military service. So-called "peasant soldiers", who were performing then compulsory military service, were housed in military bases, organized like units of the armed forces and subject to military discipline; they received the same training, including in the area of human rights as the armed forces. He recalled that there was often a dichotomy in Colombia between urban areas where citizens enjoyed the benefits of the rule of law and respect for their rights and smaller towns and rural areas where the Government was not in control and therefore could not ensure law and order and respect for human rights. As part of the strategy to assert the control of the legitimate, democratically elected Government over the nation's entire territory, units of peasant soldiers had been established to assist the security forces. Such units had been established in 450 of Colombia's 1,100 municipalities. The programme was a popular one and every week the Government received new requests from municipalities wishing to have such units established in their area.

24. **Mr. Ramírez** (Colombia), turning to question 12 on extrajudicial executions, including massacres and individual murders, said that the authorities were committed to investigating such matters. To date the Human Rights Unit of the Office of the Public Prosecutor had launched 46 investigations of reported massacres, resulting in 23 prosecutions and nine guilty verdicts.

25. **Mr. Franco** (Colombia), referring to question 13 on informers and collaborators, said that the use of collaborators and informers was provided for in paragraphs 18 and 130 to 132 of his Government's policy on defence and democratic security, which highlighted the duty of all citizens to cooperate in ensuring the rule of law. The purpose of the creation of such networks was not to seek confidential information but rather to encourage citizens to provide any information they might have which could assist in ensuring the security of society and protection of democratic institutions. The information provided was

verified by the Public Prosecutor's Office with a view to its use in legal proceedings. Collaborators and informers did not have the right to bear arms nor did they have any police powers; the distinction between the two was that informers were paid for information provided.

26. He stressed that in a context where the very foundations of democracy were being attacked, as evidenced by the targeting of teachers, union leaders, mayors, local authorities and others, protection of the rule of law could not be left to the security forces alone; every citizen had a responsibility to assist in ensuring the protection of society as a whole. The new security policy had been successful not only in fighting armed insurrection but in reducing the rate of common crimes; for example, incidents of theft had been reduced by 37 per cent, kidnapping by 26 per cent and vehicle theft by 23 per cent.

27. **Mr. Ramírez** (Colombia), responding to question 14, said that while the new Penal Code did provide for the punishment of crimes against humanity such as genocide, it had come into effect so recently — in 2001 — that there had as yet been no complaints or investigations of cases of genocide. However, forced displacements that constituted heinous crimes, all dating from before 2001, were already being prosecuted under the new Penal Code, as part of the Government's successful democratic security policy: currently the Human Rights Unit of the Public Prosecutor's Office (report, para. 144) was conducting 17 investigations and one had already led to a conviction. He was pleased to report that the instances of forced displacement had — according to figures provided by independent non-governmental organizations — fallen by 50 per cent in the course of 2003. Moreover, the Human Rights Unit had 41 ongoing investigations of forced disappearances, in addition to the investigations being conducted by the local public prosecutor's offices throughout the country.

28. His Government was actively supporting all police investigations and public prosecutions of the "social cleansing" operations referred to in question 15. In January 2004, for example, the entire Human Rights Unit had been dispatched to a south-western town in an operation in which 23 members of an illegal paramilitary force guilty of social cleansing had been captured.

29. All incidents of social cleansing had taken place in the course of the conflict. Even some police officers had been found to have killed civilians under the false pretence that they had been combatants.

30. **Mr. Solari Yrigoyen**, expressing appreciation for the high-level delegation sent by Colombia, observed that the fifth periodic report was a distinct improvement over the previous one, but that while it contained a plethora of information about legislation and agencies, it gave no sense of how effective they actually were. The Government's commitment to human rights was clear, however, and it was making valiant efforts to defend democracy even in a climate of violence which, unfortunately, was only worsening.

31. Given the almost permanent state of emergency in Colombia and the frequent failure to distinguish between combatants and civilians, he expressed particular concern over the constitutional reform legislation of 2003, which would reportedly nullify the right of habeas corpus, establish restrictions on the reporting of detentions, and impose government restrictions on basic rights that were in violation of Colombia's international obligations. He would also like a fuller statement, in answer to question 1 on the list of issues, as to whether the entry into force of the draft anti-terrorism legislation would make permanent some of the unconstitutional measures adopted during the state of emergency. It also was not clear what the State party's attitude was towards impunity for human rights and humanitarian law violations.

32. Furthermore, he was concerned that the legislation under consideration to reform the justice system might actually envisage limitations on the very valuable *amparo* proceedings hitherto available.

33. In view of the continuing reports of clear links between members of paramilitary groups and State security officials, who enjoyed impunity for their participation in the self-defence groups, he asked if it was true that the Government was contemplating granting amnesty in such cases; how the Government explained the rise in the number of paramilitary groups in recent years; why State security officers convicted of human rights violations or participation in paramilitary groups had not been dismissed; and whether any effective arrest warrants for paramilitary leaders had been issued.

34. With reference to the recruitment of "peasant soldiers", he wondered if the basic right of conscientious objection under article 18 of the Covenant was an option in Colombia.

35. Lastly, he found the delegation's answer to question 5 very troubling. How could Colombia fulfil its obligations under the Covenant if a committee of ministers decided in each case whether it should comply

with the Committee's Views and recommendations under the Optional Protocol?

36. **Ms. Wedgwood** said that the delegation represented a keystone State, one whose problem of internally displaced persons had reached an unprecedented scale.

37. She welcomed the implementation of the *Haz Paz* programme and the ratification of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. It would, however, be necessary to provide social statistics so that an objective assessment could be made to give details concerning the number of prosecutions, rather than merely stating that the capacity to prosecute existed. She wished to know if there was any policy that required prosecution as a matter of course, since a policy of prosecuting all criminal cases, with or without the consent of the victim, would act as a deterrent. Further information was also required regarding shelters for battered women and police training.

38. She took note of the possibility of defending oneself against prosecution for the crime, under Colombian law, of seeking an abortion; however, even with the availability of a defence, the possibility of prosecution marked the woman as a criminal. The fact that women did not report violence was linked to their inability to have an abortion in cases of incest or abuse. She wondered if the State might be able to lead the way by providing for a woman to have an abortion on the ground of self-defence, owing to the state of her physical or mental health. That would prevent a woman from becoming involved in criminal proceedings, and a woman who thought that she had a valid defence could receive legal advice and proceed with an abortion. It was also important to know how many doctors had been prosecuted for carrying out abortions.

39. She had received information from a non-governmental organization indicating that there were no cases of prosecution of sexual violence in the Attorney-General's Office. She wondered if that was a dated information and if the delegation could provide current figures. In the case of war crimes, it would be helpful to know if there had been, or would be, a focus on the systematic abuse of women.

40. It was unclear whether it was the national Government or the territorial states that were responsible for expenses relating to internally displaced persons. It would be useful to learn what percentage of the children of internally displaced persons went to school and whether those persons were able to vote.

41. She noted that steps had been taken to enable Afro-Caribbean people to participate in local and national elections, further details should be provided on whether Afro-Caribbean people were already participating in those activities or merely aspired to do so. Paragraph 981 of the report mentioned the challenges faced by indigenous groups, who wanted autonomous territories and the reunification of populations straddling a border, as well as a second seat in the House of Representatives; any progress made in that area should be clarified.

42. **Sir Nigel Rodley** said it was regrettable that the situation of massive human rights violations, executions, disappearances and torture had not improved over the decade and that many of those crimes were being committed by State forces or by the paramilitaries. Some paramilitary forces had been established with the acquiescence of the State authorities. While he was pleased to hear about the plans to disband the paramilitaries, further clarification was needed regarding the granting of amnesties. The delegation had pointed out that an amnesty could not be granted to a person being investigated or convicted of crimes against humanity. It was unclear, however, whether the granting of an amnesty foreclosed any future war crimes investigations, which might focus on paramilitaries and other armed groups. The Committee had raised question 10 in its last review, arguing that the plans to limit the powers of the Constitutional Court should be withdrawn. It would be helpful if the delegation would confirm that it had no intention of limiting those powers.

43. On the subject of "peasant soldiers", the State party should explain whether there was a difference between a peasant army and the rest of the military, given that the soldiers in question would be established in military bases, given some basic military training and subject to Act No. 471 of the military disciplinary code. He hoped that the "peasant soldiers" would not become a new version of the paramilitaries. Additional information on investigation procedures and criminal proceedings should be provided. He noted that there had been 23 indictments and nine convictions; it would be useful to have further details on the nature of the offences, the length of the prison sentences and the perpetrators involved.

44. Regarding the use of informers, it was not surprising that the population did not feel safe in cooperating with the security forces or the paramilitaries,

given that the security forces had shown no respect for human rights or the dignity of the people.

45. It was interesting that there had been no investigations into cases of genocide because the prerequisites of the crime had not been met. Since in Colombia the term "genocide" encompassed political motives, as well as racial, religious and ethnic ones, he wondered if there had been any massacres in the context of the armed conflict.

46. He was encouraged by the fact that the level of forced displacement had decreased by 50 per cent, although it was unclear whether the policy of prosecution had led to that, given that there had been only 17 investigations and one conviction. It would be useful to learn whether the perpetrators of forced displacement were guerrilla bands, security forces, paramilitaries, the armed opposition or what could be termed terrorists. In the case of the 41 investigations of disappearances within the national territory, more information was needed on the time period involved, the number of incidents and the identities of the perpetrators.

47. Referring to question 15, he said he understood that the Government Commission on Human Rights had travelled to the western part of the country to prosecute cases involving "social cleansing", in which the crimes had been committed mostly by the paramilitaries and the self-defence groups. The reporting State should be more specific about the number of arrests, investigations and prosecutions in those cases.

48. **Mr. Depasquale** said that he had doubts regarding the issue of informers and collaborators and wished to know whether there was any distinction between the two categories. The number of informers used by the Government should be stated.

49. **Mr. Kälin** said that he had received positive news with regard to internal displacement, including a reduction in the level of displacement. Investigations were being conducted into the crime of forced displacement. He had taken note of the detailed information in the report on programmes to assist internally displaced persons. That news contrasted with the Constitutional Court's Ruling G 025 of 22 January 2004, wherein the Constitutional Court, faced with the failure to protect more than 1,000 families, had concluded that the constitutional rights of those families had been systematically disregarded. Further information was required on that ruling and on the measures taken by the Government to implement the Court's decision. He had also received information on the specific problems of internally displaced women, who were exposed to domestic violence and gender-related violence; it would be useful to know whether specific measures existed to help them.

50. **Ms. Chanet** welcomed the completeness of the report submitted by the delegation, while suggesting that the Committee should use the conclusions of the previous report as the starting point for its analysis, as that would enable the Committee to follow the evolution of its recommendations.

51. She noted that with regard to the abduction of Ms. Batancourt two years earlier, on 23 February 2002, the situation remained the same.

52. On the subject of abortion, she had been taken aback by the delegation's replies because of the high mortality rate due to clandestine abortions. She recalled the Committee's general observations on equality between men and women, as well as it observations regarding the report submitted by Poland. In the case of a woman prosecuted for abortion under the Penal code after having been the victim of rape, she understood that the woman could benefit from extenuating circumstances, but could not claim justifying causes. That situation must be clarified if the Government aimed to comply with the Covenant and the Committee's way of interpreting the Covenant.

53. **Mr. Shearer** asked what the current situation was with regard to article 4 of the Covenant. He wished to know whether any declaration of a state of emergency had been made under article 4 of the Covenant that would constitute a derogation from the State's commitments under the Covenant. With regard to the Protocol Additional to the Geneva Conventions (Protocol II), he noted that the State had become a party to the Protocol in 1995. It was unclear whether the State party recognized that the current situation was one to which the Additional Protocol applied.

The meeting rose at 6 p.m.